U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JAN 0 2 2013 OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal from that decision. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will dismiss the motion.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability and a member of the professions holding an advanced degree. At the time he filed the Form I-360 petition on his own behalf on May 10, 2010, the petitioner was a fund development officer for a non-profit organization based in He has since begun working as a manager for program development and family wellness for The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director denied the petition on November 9, 2010, having found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. The AAO affirmed the director's findings and dismissed the appeal on March 13, 2012.

On motion, the petitioner submits a brief, several witness letters, and other exhibits.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
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> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The issue in this proceeding is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. *Matter of New York State Dept. of Transportation* (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

When the petitioner first filed the petition, counsel stated that the petitioner qualifies for the national interest waiver due to "[h]is expertise in AIDS Intervention especially in labor Intensive Industries such as mining, agriculture and energy." A May 20, 2008 letter from , director of offered the following description of mission:

> The has undertaken as its Mission *"To provide economic and trade opportunities for the most persecuted, oppressed populations – particularly women and children – enabling them to provide for themselves, their families and to break the cycle of poverty and oppression."*. . .
>
> The philosophy of is not to give away material goods to the needy but to provide skills training and development, offer small loans and Small Business development, and, assist clients to market locally-sourced products to provide producers a favorable wage for their efforts.

(Emphasis in original.) The AAO noted: "If performed work directly related to HIV/AIDS patient care or prevention, its director made no mention of such work in her letter." On Form ETA-750B, Statement of Qualifications of Alien, the petitioner stated that he was a "Fund Development Officer" for He stated that his responsibilities were to "[d]irect legal, administrative, financial, marketing, fundraising and field visits to projects sponsored by Facilitating economic and training opportunities."

The petitioner left in September 2010 and began working for shortly afterward. web site included the following description of the petitioner's role there:

> His responsibilities include promoting and developing the corporate identity of the organization whilst at the same time applying his knowledge, skills and experience to help those impacted by crime and incarceration in This includes programs in prison, helping incarcerated fathers to prepare for successful reentry into their families and society as well as working outside of prison to help dependents deal with family reconstruction, incarceration and reentry.

Source: (printout added to record December 28, 2011). In a January 13, 2012 notice of intent to dismiss the appeal, the AAO stated that the petitioner's "latest position at however, does not appear to relate to HIV/AIDS prevention and care at all."

In response, the petitioner submits a letter dated January 10, 2011, signed by board of directors. The letter indicated that had not yet started its HIV/AIDS work, but intended to do so now that the petitioner was on staff. A new job description indicated that the petitioner "is *generally* responsible for the project management of our existing programs and support unit but . . . will *specifically* be responsible for developing new community-based initiatives that will address the prevention of HIV/AIDS and Sexually Transmitted Infections in accordance with the newly released US National AIDS Plan."

The petitioner submitted a described "vision," "mission," "objectives," "ministries," "opportunities" and other activities. The pamphlet included mention of "day camps," a "Mom's Club" and a "Skateboard Ministry."

The AAO, in its dismissal notice, observed that materials for public consumption, such as its web site and the pamphlet, did not discuss HIV/AIDS. Materials created specifically for the AAO's benefit, however (such as employer letters) heavily emphasized the petitioner's work with HIV/AIDS. Quoting the AAO stated: exists not as a public health organization for the general benefit of the community at large, but as a religious missionary organization 'established to address the national spiritual crisis that is now reflected in and through America's Criminal Justice systems.'" The AAO concluded:

> When judging the credibility of the petitioner's submissions, it is highly significant that HIV/AIDS prevention and education only surface as major elements of the petitioner's current job in the context of immigration filings. The AAO also cannot ignore that nonimmigrant petition on the alien's behalf strongly emphasized his past work with HIV/AIDS. When called upon to explain how his largely administrative/managerial work at related to HIV/AIDS, the petitioner submitted no evidence to that effect. Instead, counsel essentially acknowledged that there was no strong connection, stating that the waiver application rested on the petitioner's HIV/AIDS work, not on his later fund development work for Thus, the record shows that the petitioner has, in the past, relied upon his past HIV/AIDS-related work to obtain immigration benefits that allowed him to perform unrelated work. In this light, the differences between public materials and its letters to USCIS are very significant.
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> Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

The petitioner devotes some of his ten-page motion brief to peripheral issues, such as the question of whether his title at was "Fund Development Officer" or "Program Development Officer," and whether the petitioner, who lacks medical training, is a "qualified health professional." These

issues are tangential to the central point, which is that and then emphasized HIV/AIDS only in materials prepared specifically to support immigration petitions. The public faces of these organizations emphasized important, but very different, purposes and goals. The AAO dismissed the appeal because this discrepancy raised significant credibility questions.

On motion, the petitioner submits a copy of his ' dated April 12, 2012, a month after the AAO dismissed the appeal. The plan indicates that the petitioner "is employed by a 501(c)(3) organization in that focuses on the Reentry of prison inmates into society," and intends to "[e]stablish a company specializing only in [the petitioner's] field of expertise" while continuing to work for .

The newly-crafted plan does not establish that the petitioner was eligible for the benefit sought at the time he filed the petition in May 2010. The plan does not indicate that the AAO made an incorrect decision based on the record at the time of the dismissal of the appeal, nor does it offer new evidence relevant to the petitioner's eligibility at the time of filing the petition.

The petitioner explains how his work for would advance his goal of HIV/AIDS prevention:

> The county prison inmates are incarcerated for relatively short periods of time. [The petitioner] can have an influence on them as a 'captive' audience via the existing nursing and medical facility or the chaplain's office. These inmates move back to their respective communities who are usually serviced by religious organization[s], e.g. The service provide[d] in the communities related to the inmates might grow into interest from other groups and organizations, e[.]g[.] schools, churches, non-faith-based organization[s] and might potentially have an impact on the nation as a whole.

The scenario described above is admittedly speculative; the petitioner uses the word "might" twice in the same sentence when predicting the results of his work. The petitioner submits no evidence that this strategy had proven effective as of the date of filing the petition, or even during the nearly two years that passed between the filing of the petition and the filing of the motion. Conjecture about what "might" work is not a basis for the national interest waiver.

The petitioner submits printouts from two web sites operated by One page, marked as the petitioner's "Job Description," emphasizes his work with HIV/AIDS. The date on this page is March 18, 2012, five days after the AAO issued its dismissal notice. Another page detailing the petitioner's intended work with HIV/AIDS has an even later date, April 9, 2012. The timing of the posting of these pages (during the interval between the dismissal and the filing of the motion) does not appear to be coincidental. The petitioner submits no evidence that implemented an HIV/AIDS program between the time it hired the petitioner and the filing of the motion more than a year later.

The petitioner's motion includes four new witness letters (and a copy of a previously submitted letter). The resubmitted letter is from who credited the petitioner with a "'best-practice' model of HIV/AIDS intervention He was instrumental in getting the community in this area to take joint responsibility for

their wellness with government and non-governmental groups and international agencies." The petitioner asserts that letter shows that "peer-based prevention interventions, a method used by the Petitioner, actually promote wellness." The petitioner does not show what "peer-based prevention interventions" he implemented since his 2008 arrival in the United States. As late as 2012, he showed only that he intends to implement such strategies at some unspecified future point in time.

In one of the new letters, identifies himself as a former vice president of the board of directors from 2008 to 2010. stated that the petitioner's responsibilities at included "training U.S. teams about HIV/AIDS" as well as a project that "offered free HIV testing, counseling and treatment as well as food, clothing, shelter and employment opportunities" "for prostitutes in "

The record contains a previous letter from , dated September 9, 2010. In the earlier letter, did not mention at all (except to list his position among 20 "Other Activities" in an accompanying biography). did not, in 2010, indicate that the petitioner's work at included any significant HIV/AIDS-related activity. Rather. focused on his collaboration with the petitioner at "

In an April 10, 2012 letter, chief executive officer of the described the petitioner's work in Africa. With respect to the petitioner's work in the United States, asserts that the petitioner's "proposed interventions will make a noticeable impact" in reducing new HIV infections. did not identify or describe these interventions, or state to what extent the petitioner has already implemented them.

Another new letter, dated April 1, 2012, is from member of the board of directors and chairman of the executive committee of the The letter is addressed to stated:

> We have been meeting since April 2010. . . .
>
> I met [the petitioner] . . . at the meetings. He is very faithful in attendance and regularly shares relevant information with both volunteers and inmates regarding family wellness, specifically focusing on the importance of fathering/parenting. This is very important to reduce/avoid several lifestyle diseases such as HIV/AIDS and other addictions.

In the passage quoted above, mentioned HIV/AIDS almost in passing rather than as a focus of the petitioner's work.

executive director of wrote a letter to on April 1, 2012, having met the petitioner at a conference the week before. asked for permission "to continue consulting with" the petitioner, having learned that the petitioner "has experience in the design of national policy, especially HIV/AIDS prevention and care." stated: "HIV/AIDS/STI and other lifestyle complications are realities in

prisons," but did not mention any specific accomplishments by the petitioner in that area. Rather, he stated that he learned, "in conversation," of the petitioner's "work in Africa."

The letters submitted on motion do not show that, as of the time of filing the petition, the petitioner was engaged in ongoing, influential work relating to HIV/AIDS prevention, treatment or policy. Rather, they indicate that, several years after the filing date, plans for such work were still embryonic.

Printouts of electronic mail messages submitted on motion reflect the petitioner's unsuccessful efforts to solicit letters from two officials of the United States government. In August and September 2010, the petitioner sought a letter from , then director of the . The petitioner, in his message, mentioned his past work but did not state that he was, at the time of writing, working in the area of HIV/AIDS. Rather, he stated: "I am in the employ of a non-profit focusing on empowering abused women and children in developing countries to become economically independent." This description is consistent with other descriptions from the period. In April 2012, again without success, the petitioner attempted to obtain a letter from

The petitioner labeled the printouts as evidence of "communication with and "communication with This description is somewhat misleading, as there is no indication that saw either message. Rather, the responses are from staffers, who informed the petitioner that the officials did not have time available on their upcoming schedules and, due to ethics rules, could not provide endorsement letters.

USCIS disfavors motions for the reopening of immigration proceedings for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the petitioner has not met that burden. The petitioner has not provided new, previously unavailable evidence to establish eligibility as of the petition's filing date. The AAO will dismiss the motion to reopen.

Furthermore, the revisions to the record (such as changes to the CCGM web site immediately after the AAO dismissed the appeal), coupled with the lack of first-hand, contemporaneous documentation, serve to compound rather than resolve the credibility issues that the AAO cited in its earlier decision.

The petitioner cannot use a motion to reconsider to raise a legal argument that the petitioner could have raised earlier in the proceeding. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the "additional legal arguments" in a motion to reconsider should flow from new law or a *de novo* legal determination reached in the disputed decision that the petitioner could not have addressed previously. Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60. The

petitioner has not shown that the AAO's decision was incorrect at the time of that decision. Therefore, the petitioner's motion does not meet the requirements of a motion to reconsider.

ORDER: The motion is dismissed.